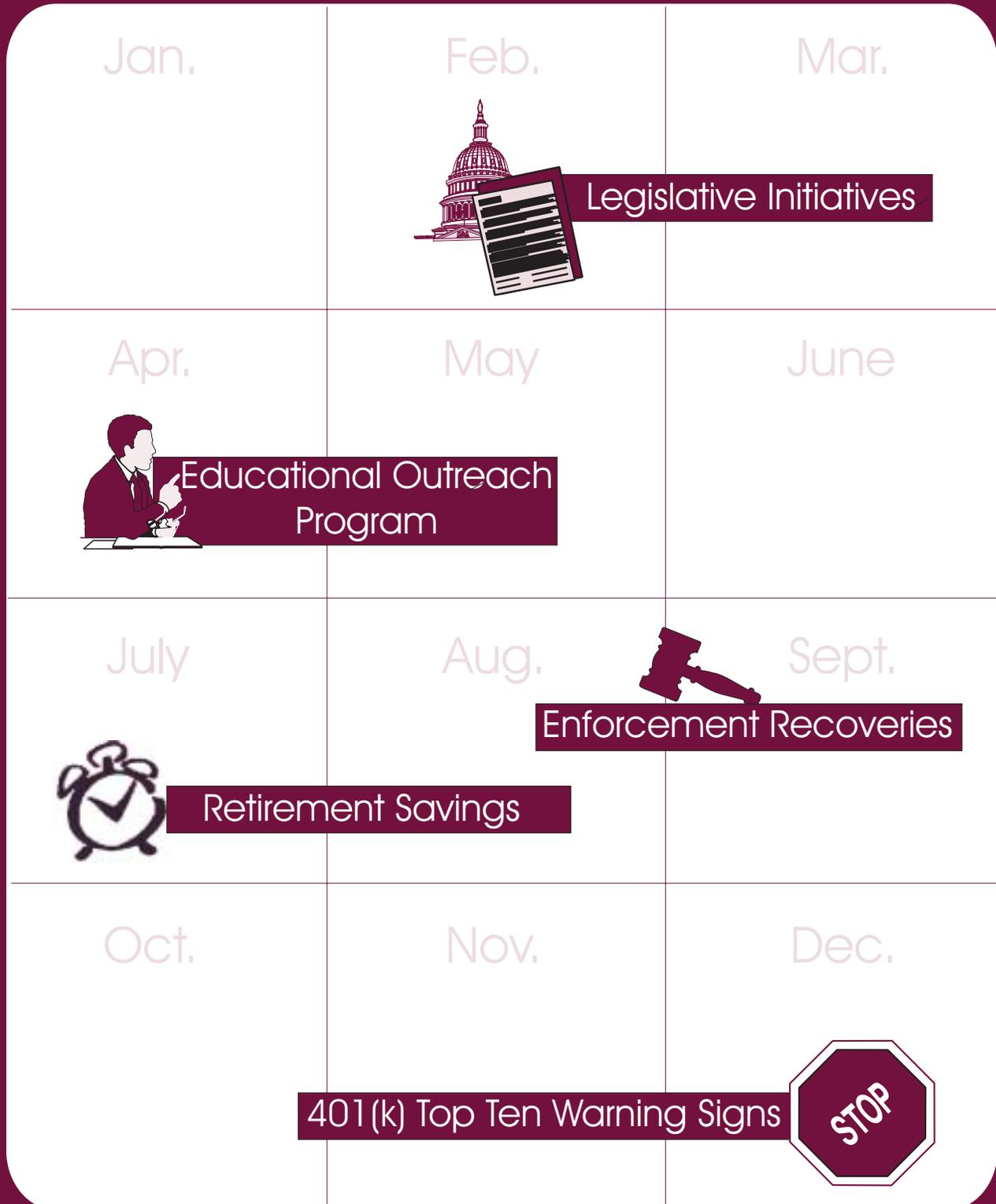


# Employee Retirement Income Security Act 1995 Report to Congress



U.S. Department of Labor  
Pension and Welfare Benefits Administration



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# Employee Retirement Income Security Act 1995 Report to Congress

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U.S. Department of Labor  
Alexis M. Herman, Secretary

Pension and Welfare Benefits Administration  
Meredith Miller, Deputy Assistant Secretary

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## Introduction

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The Pension and Welfare Benefits Administration (PWBA) of the U.S. Department of Labor protects the integrity of pensions, health plans and other employee benefits for more than 150 million people. The agency's mission includes administering and enforcing the fiduciary and reporting and disclosure provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). The provisions of Title I were enacted to address public concerns that funds of private employee benefit plans were being mismanaged and abused.

Since its enactment in 1974, ERISA has been amended to meet the changing retirement and health care needs of employees and their

families. The role of PWBA also has evolved continually to meet these challenges. In 1985, the Consolidated Omnibus Budget Reconciliation Act (COBRA) was passed, and PWBA was charged with issuing regulations regarding certain notification requirements.

PWBA accomplished its mission through the collective efforts of seven major offices that either administer policies or carry out initiatives in the following areas: enforcement, participant assistance, exemptions, regulatory activities, policy and legislative analysis, accounting and auditing, and research. The agency also provides staff for a bipartisan, independent council that appraises the programs instituted under ERISA and makes recommendations to the Secretary of Labor.

This report details the 1995 accomplishments of the agency in executing its mission.

## 1995 Highlights

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The Pension and Welfare Benefits Administration had a year characterized by several innovative initiatives, which were evident throughout its program operations.

In the enforcement arena, PWBA expanded its strategy to include a new on-going area of emphasis — an investigative presence in the area of smaller pension and welfare plans. The agency's efforts in this area were especially important given the rapid increase in the number of participants and assets in these plans.

Agency efforts to investigate allegations of fraud and misconduct among plans and employers, particularly the failure to properly administer employee 401(k) contributions, uncovered some patterns of abuse. The result was that the agency launched its national Employee Contribution Project, which addressed the failure of some employers to remit employee contributions to 401(k) pension benefit and health care plans.

In the regulations area, PWBA issued an interpretive bulletin on the legal standard under Title I of ERISA for a fiduciary's selection of an annuity provider, as well as proposed regulations relating to the timing of employee deposits of participant contributions to employee benefit plans. PWBA also issued proposed guidance concerning standards for determining whether an employee benefit plan is established, or maintained, pursuant to one or more collective bargaining agreements for purposes of Sec. 3(40) of ERISA.

PWBA made tremendous strides in educating Americans about retirement savings to help them better prepare for life after work through its Retirement Savings Education Campaign. The agency assembled a broad-based public/private partnership to educate the public on the need to save for retirement and to heighten public interest in the area of retirement security. With respect to participant assistance, it also adopted new customer service standards that lessened the response times devoted to participant inquiries.

The agency's legislative activity in 1995 included assuming a primary role in the Administration's pension simplification proposal and in a revised bill to strengthen audits of employee benefit plans. PWBA's research program produced two major statistical publications, several major health policy studies, and a number of pension research projects.

In the area of accounting and auditing, the agency initiated the Delinquent Filer Voluntary Compliance Program to encourage plan administrators to file previously unfiled Form 5500 Series annual reports and initiated an educational outreach program, whereby seminars were conducted throughout the country to brief the plan benefits community on the Form 5500 filing requirements and to give overviews of the Department's enforcement program.

In processing exemptions in 1995, the agency ended the year with 165 of the 258 exemptions filed being granted, 112 either being denied or withdrawn, and 176 still under consideration.

## Message from the Deputy Assistant Secretary

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This year has been one of challenges and successes at PWBA, including the achievement of several first-time accomplishments in which the staff can take tremendous pride.

The Retirement Savings Education Campaign raised public awareness of the need for Americans to save and plan for their retirement and built a coalition of private-sector partners committed to retirement education.

Workers found help for protecting their pensions and preventing 401(k) plan fraud through the Employee Contribution Enforcement Project.

The legal standard under Title I of ERISA for a fiduciary's selection of an annuity provider was outlined in Interpretive Bulletin 95-1.

The Delinquent Filer Voluntary Compliance Program, which reduced monetary penalties for employee benefit plan administrators, encouraged voluntary compliance with federal pension law.

An improved customer service effort in the agency's technical assistance — and throughout the agency — helped workers learn more about their rights under ERISA and their entitlement to benefits.

The hard work and dedication of PWBA's staff this year has been a tremendous factor in helping American workers secure their pension and welfare benefits.



*Deputy Assistant Secretary  
Meredith Miller, PWBA*

## Enforcement

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The Office of Enforcement (OE) is responsible for overseeing and implementing the agency's investigative programs. Through 15 regional and district offices, it conducts investigations to detect civil and criminal violations of Title I of ERISA, related Labor Department violations and criminal laws relating to employee benefit plans.

In 1995, OE opened 4,773 civil investigations and 98 criminal investigations. There were 93 persons indicted as a result of criminal investigations in which PWBA was involved. Overall, the enforcement program recovered \$388.8 million for private benefit plans.

### **Employee Contribution Project**

PWBA initiated in February 1995 one of the most comprehensive and expansive projects in the agency's 21-year history — the Employee Contribution Project. This project was designed to detect and correct either the mismanagement or misappropriation of employee contributions by employers to pension and welfare benefit plans, with an emphasis on 401(k) plans.

The project was launched as a national enforcement initiative after the agency received an increase in the number of complaints about 401(k) plans. The agency consensus was that an intensive, nationwide initiative would raise the visibility of the problem and encourage employees to report potential violations to PWBA. It would also discourage this type of violation in the employee benefit community.

By December 1995, 497 401(k) investigations had been opened; of that number, 156 had been closed, and \$3.5 million had been returned to 401(k) plans due to this effort.

### **Other Agency Initiatives**

Other national enforcement initiatives in which the agency focused its efforts and resources in 1995 included:

### ***Annuity Project***

Since April of 1990, PWBA has been conducting a national investigative project focusing on pension plans' selections of insurance companies to provide annuities that may have placed the benefits of participants and beneficiaries at risk.

### ***MEWAs***

PWBA conducted on-going investigations of multiple employer welfare arrangements (MEWAs), which pool small employers to create a larger entity with stronger negotiating power to purchase health or other welfare benefits. Many of the arrangements were operated by unscrupulous promoters who would sell the promise of inexpensive health benefit insurance, but then default on their obligations.

### ***Derivatives Project — Other Agency Initiatives***

A project designed to identify ERISA plans that are involved in speculative or risky derivative investments was initiated by the agency, in response to concerns pertaining to potential problems with the plans' use of derivatives.

### ***Proxy Voting Project***

This project examines pension plans and their investment managers' proxy voting practices. Opened investigations involved 44 ERISA plans and 12 investment managers with stock in five selected companies. The final report was completed and distributed in February 1996.

### ***Criminal Investigations***

Criminal investigations and prosecutions continued to be a vital part of PWBA's enforcement program. They are particularly effective in situations where civil enforcement would provide no

meaningful relief or egregious conduct is evolved.

### ***Administrative Services Only (ASO) Project***

PWBA continued to examine on a nationwide basis Blue Cross and Blue Shield associations and other similar insurance providers that have ASO arrangements with self-funded health plans. Prior year investigations have found that providers have negotiated for discounts, rebates and credits with medical service providers. They failed to disclose this information, and did not pass discounts to self-insured plans or their sponsors, who reimbursed and paid fees to Blue Cross based on unreduced charges.

### ***Real Estate Valuation Project***

PWBA continued to investigate the alleged overvaluation of properties held by commingled real estate funds in which pension plans invest. The effects of overvaluation of real estate held by commingled funds may include plans overpaying for the investments, being overcharged for related management fees, or being stranded if other plans cash out at inflated values.

## **Civil Cases**

Many of the civil cases mirrored some of the agency's principal initiatives. The civil case brought against New York plan official Ralph Corace on Oct. 18, 1995, represented the largest amount of losses alleged at that time in a 401(k) plan. Yet, the agency was equally vigilant in prosecuting cases where abuses occurred in other areas, such as those pertaining to annuities and ASOs. The following is a listing of some of the significant civil cases brought by the Department in 1995. *(Where applicable, an agency initiative*

*that is targeted by a specific case is noted in bold at the end of the narrative.)*

### ***Reich v. Corace*** 10-18-95 *New York, N.Y.*

Ralph Corace, owner of Job Shop Technical Services, Inc., failed to deposit employee contributions owed to the company's 401(k) plan. The investigation discovered that up to \$2.7 million in contributions from as many as 300 participants may have been improperly used. Job Shop, which became defunct, operated as an employee leasing company for engineers and consultants nationwide and maintained a 401(k) plan for 755 participants.

The Department's lawsuit sought restoration, with interest, of all losses suffered by the plan and participants, replacement of both Corace and Job Shop with an independent trustee, and a permanent bar from administering any plans covered by ERISA. **(Employee Contribution Project)**

### ***Reich v. Blue Cross/Blue Shield of Massachusetts*** 11-28-95 *Boston, Mass.*

Blue Cross/Blue Shield allegedly retained the cost savings owed to the plan that resulted from reductions in the costs of hospital services for covered participants and beneficiaries. The company also allegedly billed the plans more than the amount owed to hospitals for medical services and retained the excess payments for its own use; calculated fees on the unreduced charges rather than the lower amount paid by hospitals in cases where plans were billed on a percentage of total benefit payments; and inflated co-payments paid by participants and beneficiaries by basing the calculations on the unreduced charges for medical services.

The Department asked that the court require Blue Cross/Blue Shield to reimburse the plans, participants and beneficiaries for the amounts, which will be determined by an independent accountant appointed at the company's expense. **(Administrative Services Only Project)**

***Reich v. Raymark Industries, Inc.***  
10-17-95  
*Stratford, Conn.*

The U.S. Department of Labor filed a lawsuit against Raymark Industries, Inc. and Raytech Corporation alleging its officials paid Executive Life almost \$50 million to fund pensions for more than 2,000 employees covered by three pension plans.

Raymark Industries was unable to make contributions to its pension plans in 1984 and 1985 because of severe financial problems following lawsuits over its manufacture of asbestos. Raymark officials terminated two of the plans and bought annuities from Executive Life.

Raymark officials were alleged to have improperly selected Executive Life annuities to avoid paying additional contributions. The officials allegedly failed to adequately consider Executive Life's financial stability, credit worthiness and ability to pay claims. They also allegedly did not fully evaluate Executive Life, which had the least expensive bid, against other insurance companies' claims.

Raytech once owned 100 percent of the stock of Raymark Industries' parent corporation, Raymark Corp. The Labor Secretary originally sued Raytech on the grounds that it was also responsible for Raymark Industries' liabilities.

Universal Friction Composites, a company that agreed to assure liability for certain benefits payments to Raymark's retirees, will make more than \$300,000 in payments to cover the shortfall of annuity payments that occurred after Executive Life was acquired by the state of California in

1991. The terms of the state's rehabilitation plan for Executive Life provided for all annuity payments except the shortfall. **(Annuity Project)**

***Reich v. McCrory Corporation***  
12-12-95  
*York, Pa.*

McCrory Corporation, a national chain of discount variety stores, imprudently selected Executive Life Insurance Company to pay pension benefits for certain active and former employees of the company, and its affiliates, after the plan was terminated in 1985. Executive Life was placed in receivership by the state of California in 1991. The state's rehabilitation plan required Aurora National Life Assurance Company to purchase and execute the insurance business of Executive Life.

McCrory agreed to purchase an annuity contract or similar insurance product to completely cover any benefit shortfall owed to participants covered by the Executive Life annuity contract. **(Annuity Project)**

***Reich v. Tyco International, Ltd.***  
9-25-95  
*Exeter, N.H.*

Tyco International Ltd. and its subsidiary Grinnell Corporation reached an agreement with the Labor Department to make periodic payments to cover any shortfall in retirement benefits to participants in 34 states and Canada, whose benefits were funded through Executive Life Insurance Company of California.

The company employed 14,000 people

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worldwide and produced and distributed a wide range of fire protection equipment. It merged with Grinnell in 1986 and subsequently terminated the Grinnell pension plan and formed a new pension plan that covered those employees. Approximately 334 participants were covered by the Grinnell pension plan before the merger. The company used approximately \$10.7 million in plan assets to purchase annuities from Executive Life to fund their benefits.

Under the agreement, Tyco and Grinnell agreed to pay any shortfall and amounts not paid under the rehabilitation plan, which was implemented after the state of California put Executive Life in receivership. Tyco had been making payments to workers since 1991 to compensate for the shortfalls in benefit checks. **(Annuity Project)**

***Reich v. Parker***  
6-16-95  
*Houston, Tex.*

More than \$7.4 million has been recovered for the retirement plan of Parker Brothers, Inc. under a settlement agreement with plan trustees, the company and the Labor Department. The trustees of Parker Brothers, Inc. allegedly invested more than \$7.1 million of plan money in highly speculative loans to individuals and companies.

***Reich v. Daniels***  
12-8-95  
*Lexington, Mass.*

Alfred C.W. Daniels of the now defunct H. H. Aerospace Design Company, Inc., has been ordered by the U.S. District Court in Boston, Mass., to pay more than \$2 million to the Pension Benefit Guaranty

Corporation, which under the law, assumed trusteeship and started plan termination proceedings in 1993 because the pension plan lacked sufficient assets to pay retirement benefits. The defined benefit plan covered as many as 170 employers of the company.

Daniels is alleged to have commingled plan assets with his personal monies and then failed to account for mission plans assets while he was acting in a fiduciary capacity. The Department of Labor filed suit in January 1995 seeking both the monetary and injunctive relief. A consent order providing for such relief was approved by the court.

***Reich v. Norcal Waste Management , Inc.***  
11-6-95  
*San Francisco, Calif.*

The Labor Department filed a lawsuit against Norcal Waste Management, Inc. and Envirocal, Inc., two wholly employee-owned companies, which merged creating the merger of their stock ownership plans.

The Department alleged in its lawsuit that the administrative committee of the Envirocal ESOP failed to adequately investigate the merger and to obtain independent advice in connection with the merger. Norcal has guaranteed, as part of the settlement, that the Norcal ESOP will be represented by independent advisors involving future purchases of Norcal securities.

***Reich v. Hawthorne***  
7-14-95  
*San Diego, Calif.*

J. T. Hawthorne, the major stockholder at Hawthorne Machinery Company, Inc. violated ERISA's provisions requiring a fiduciary to act solely in the interests of plan participants and their beneficiaries when he authorized a transaction for the company to open an escrow account to purchase real property. The Labor Department

obtained a consent judgment against Hawthorne ordering him to make at least \$689,465 in restitution to the company's profit sharing plan.

***Reich v. Alperin***  
2-21-95  
*Scranton, Pa.*

The Labor Department filed a lawsuit against Alperin, Inc. and trustees of its pension plan for improperly making more than \$1.5 million in loans to family members, friends and business associates with plan money. According to the lawsuit, the trustees used plan money to make 21 loans to family, friends, customers and business associates. The trustees were accused of treating the plan's assets as personal assets.

They were charged with failing to follow formal loan procedures in making the loans. They also failed to conduct credit checks and to investigate the financial condition of borrowers. In addition the trustees failed to collect outstanding plan loans and wrote off loans without taking steps to collect the loan balances.

The lawsuit seeks a court order to remove the defendants from their positions with the plan and to appoint an independent manager to oversee the plan. The lawsuit also asks the court to require the defendants to reimburse the plan for all losses resulting from their improper actions and to permanently bar them from serving in positions of trust for any plan governed by federal pension law.

***Reich v. Bourns***  
1-25-95  
*Riverside, Calif.*

Bourns, Inc., the manufacturer of electronic aerospace components, failed to sufficiently investigate the merits of an investment in which it improperly loaned \$7.5 million to construct a mobile home park in Peris, Calif. The pension plan covered 1,251 participants. The company also allegedly failed to adequately monitor the use of loan proceeds and authorized continuing loans

advances without determining whether previous loan amounts were properly used.

The company has been ordered in a consent judgment obtained by the Labor Department to repay its employee pension plan up to \$6.55 million. The plan has also been required by the court to transfer the loan properties to Bourns, Inc., which will assume all liabilities connected with the mobile home project.

## **Criminal Cases**

Criminal cases investigated in 1995 by the agency included both large and small plans, pension and health plans, MEWAs, single employer and Taft Hartley plans, and plans throughout the U.S., with a variety of defendants ranging from business owners to service providers.

***Michigan v. Timberlake***  
1-20-95  
*Traverse City, Mich.*

Charles W. Timberlake, former owner of Honer Timberlake (HT) Pension Services, Inc., in Traverse City, Mich., was sentenced to up to 120 months in prison for embezzling plan assets and ordered to restore \$364,663 to the AlcoeTec Wire company's 401(k) plan.

Timberlake was the third-party administrator and trustee to the AlcoeTec Wire company pension plan, which covered approximately 60 participants. According to court records, when AlcoeTec Wire delivered plan funds to Timberlake, he subsequently liquidated plan investments for more than a 2-year period and converted the fund to his own use. He concealed the theft by falsifying records furnished by HT Pension Services and admitted using the funds to prevent

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the bankruptcy of his company.

The prosecution resulted from an investigation by the Traverse City Police Department in cooperation with PWBA. The case was prosecuted by the county prosecutor's office.

***U.S. v. Orena et al***  
**9-8-95**  
*New York, N. Y.*

John T. Orena, and other individuals connected with the Colombo La Costa Nostra crime family, were charged in a 10-count superseding indictment with conspiracy, Racketeering Influenced and Corrupt Organizations (RICA) violations and embezzlement, embezzling from an employee benefit plan, and mail and wire fraud.

The indictment charged that Orena, James McNeil (trustees of the Teamsters Local 707 union pension funds), Thomas Petrizzo and Kenneth Paskewicz entered into schemes to purchase and renovate the union headquarters site at a price that would generate a substantial profit that would be transferred to Victor Orena, father of John T. and the acting boss of the Colombo family in various crime activities.

Other participants in the scheme were John Marra, a builder and real estate broker who assisted the "family" in illegally earning large sums of money and Nicholas Cassisimatis (aka Nick Cassis), a real estate broker.

The indictment further charged that McNeil, the plan trustee, used the pension fund to award lucrative contracts to the Dale Construction Co., which was part of a joint venture controlled by Victor Orena. The contracts were awarded on the basis

of bids rigged by Petrizzo and Paskewicz who created false records. The demolition, interior renovation and roofing jobs were awarded to Dale Construction Company and the pension fund was defrauded out of \$1,071,500. Further action is pending.

***U.S. v. Harris***  
**6-14-95**  
*Pleasanton, Calif.*

An eight-count indictment was returned charging Michael F. Harris of Pleasanton, Calif., with making false statements in government-required pension plan documents, theft from an employee benefit plan, and mail fraud.

Harris operated a real estate business in Pleasanton that had a pension plan for its employees of which he was the trustee and plan administrator. The pension plan required Harris Realty to make annual employer contributions. However, Harris would put money into the plan account and then immediately withdraw it and invest it in speculative real estate projects in which he had a substantial personal interest.

While a plan trustee, Harris fraudulently filed records that indicate the plan participants had assets valued in excess of \$900,000. In fact, the plan only had a collection of unsecured promissory notes from Harris' real estate ventures on which few payments were made, and most were uncollectible. The trial is pending. The case resulted from a PWBA investigation.

***U.S. v. Lee and Yamauchi***  
**2-7-95**  
*San Francisco, Calif.*

The former owners of Eschelon Mortgage Co. were charged in a 13-count indictment alleging they defrauded three financial institutions of more than \$14 million and stole more than \$140,000 of 401(k) plan money. They were also charged with bank, mail and wire fraud and embezzlement.

James Yiu Lee and Jonathan Yamauchi were the former owners of Eschelon Mortgage Co., which ceased business operations in 1993. Eschelon operated as a retail and wholesale mortgage broker by originating residential loans through direct contact with borrowers. They allegedly stole money directly from the 401(k) trust fund that was used for company operations, including payment of their salaries. To conceal their theft, the defendants created a false document to make it appear that the plan had purchased mortgages.

The defendants — who argued they merely failed to transfer the money from the corporate to the plan account — sought through appeal to apply corporate money to the amount allegedly embezzled, but was declined by the court. Nevertheless, they did make restitution of \$34,223. The trial is pending. The investigation was jointly conducted by PWBA and the FBI. **(Employee Contribution Project)**

***U. S. v. Yamada***  
2-17-95  
*Springfield, Ill.*

George Yamada, a financial investor, was sentenced in May to 2 years imprisonment after pleading guilty to taking money provided to him to invest on behalf of pension plans, but used to fund gambling and personal expenses. Yamada was owner and operator of Midwest Associates Pension Services, Inc., which provided administrative and consultation services to various employee benefit plans. In addition, he was an agent for Prudential Insurance Company of America and was authorized to sell insurance and various financial instruments.

The criminal information filed in February alleged that Yamada cashed two checks totaling \$25,000 drawn on an account into which embezzled funds had been deposited. The following day he is alleged to have flown from Springfield to Las Vegas, where he spent at least \$14,000 in cash on gambling. The information also charged that Yamada received more than \$405,000 between

October 1993 and April 1994 to invest for the plan, which he used instead for personal expenses, including gambling. Also, he received \$93,280 in pension money from a Beverly Hills doctor, but used the money for gambling debts.

In addition to his imprisonment, he received 3 years supervised release and was ordered to make restitution of \$150,000. This case was investigated by PWBA and the FBI.

***U.S. v. Malcolm and Stephanie Cheek***  
3-2-95  
*St. Louis, Mo.*

Malcolm Cheek, the former chairman of the Y&A Group, Inc., was sentenced to 9 years imprisonment and 3 years supervised release after pleading guilty to violations ranging from five counts of embezzlement of plan assets, conspiracy, and bank fraud. Stephanie Cheek was sentenced to 37 months imprisonment. Y&A sponsored the Y&A Group Savings Incentive Plan and Trust, which had approximately 125 participants. Contributions were supposed to be made on a monthly basis, but ceased to be made between October 1990 and March 1991. The bank fraud charges involved double pledging of Y&A stocks for bank loans.

The case was investigated by PWBA, the Georgia Bureau of Investigation, the Georgetown, S.C. Police Department, the FBI, the Securities and Exchange Commission and the U.S. Bankruptcy Court Trustee.

***U.S. v. Garrison et al.***  
3-08-95  
*Augusta, Ga.*

A 133-count indictment was returned against Jeanette Garrison and five other

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defendants on charges ranging from money laundering, bank fraud and embezzlement of employee benefit funds. The defendants were charged with embezzling money from HealthMaster, Inc.'s self-insured employee health plan.

The conspiracy charges related to a scheme to defraud the medicare program of millions of dollars by the submission of fraudulent cost reports for reimbursement to the medicare fiscal intermediary.

Garrison, president and chief executive officer of HealthMaster, pleaded guilty the following July to one count of conspiracy and nine counts of filing false government statements. She agreed to a sentence that stipulated a 10-year ban from serving in the medicare business and to pay restitution of \$11.5 million to Medicare and Medicaid. Garrison also was sentenced in October 1995 to 33 months imprisonment, 3 years supervised release and 200 hours of community service.

The case was investigated by the state of Georgia, the Georgia Bureau of Investigation and Department of Audits, FBI, IRS, HHS/IG, with assistance from the State Insurance Commissioner and PWBA.

***U.S. v. Hara***  
3-20-95  
*Chicago, Ill.*

A Chicago car dealer, Raymond Hara, was charged in a criminal information with participating in a check kiting scheme in which he allegedly embezzled \$948,000 from the King Nissan Employee Profit Sharing Plan. Hara was the plan's trustee at the time of the embezzlement.

He had also been charged with defrauding the Continental Bank of more than \$470,000 through a check kiting scheme.

Hara admitted that over a 3-month period in late 1992 to early 1993, he shifted approximately \$13.4 million in checks among six businesses and personal bank accounts. He also admitted to embezzling approximately \$700,000 from the profit sharing plan between September 1991 and the end of 1993.

Restitution of \$947,862 was made to the plan. He was sentenced on Sept. 26 to 27 months imprisonment and 3 years supervised release.

***U.S. v. Viana and Hook***  
3-24-95  
*Galesburg, Ill.*

An indictment was handed down against the owner of Wittek Industries and her attorney for their role in a 1992 scheme that resulted in the loss of almost \$700,000 of pension funds. Carmen Viana entered the U.S. in 1980 from Brazil and served as president of an international import and export company before being hired as the vice chairperson for Wittek Industries, Inc. in 1989. She subsequently became the company president and trustee of the four pension plans sponsored by the company. She retained George Hook as legal counsel to advise her on financial problems involving the company and questions pertaining to the plans.

An affidavit filed in the case alleged Viana and Hook devised a complex scheme through which they were able to fraudulently obtain approximately \$696,855 in plan assets. The money was partially used to make substantial salary increases to Viana and periodic payments to her \$265,000 residence.

The pair also operated a sham real estate company for which they were able to fraudulently obtain a bank loan, under the guise of investing on behalf of the pension fund in a real estate operation. Although they maintained the funds from the plan were being used to sell property that was owned by Wittek, the money was used to pay the company's debt and to meet company expenses.

The defendants were charged with three counts each of wire fraud and theft from a pension fund and four counts of money laundering.

Hook maintained he was merely executing his duties as an attorney, while serving as his own defense counsel in the case. Viana, a Brazilian national, became a fugitive and is presumed to be living in Brazil. The case was investigated by PWBA and the Criminal Investigation Division of the IRS.

***U.S. v. Hardesty***  
4-06-95  
*Topeka, Kan.*

A 69-year-old Topeka attorney was charged in an 11-count indictment with embezzling more than \$1 million in pension funds, money laundering and mail fraud. He embezzled more than \$2.1 million from four clients.

In November of 1995, he was sentenced to 70 months in jail and ordered to make restitution of \$1.28 million after pleading guilty to one count each of embezzling \$1,031,000 from the National Federal Revised Retirement Plan, one count of mail fraud involving another client and one count of money laundering.

Murray Hardesty was entrusted with investment management responsibility for the pension fund and other funds. He used the majority of the funds — approximately \$1.5 million — as venture capital for five companies he was attempting to launch; as payments on his home, office, a condominium for his ex-wife and daughter; and for credit card and country club expenses.

He maintained the scheme by providing false reports to his clients. He indicated on reports that the funds were invested in asset-backed securities or mortgaged-backed securities, when he had, in fact, already converted the money. The case was investigated by PWBA and the FBI.

***U.S. v. Ullah***  
5-3-95  
*Los Angeles, Calif.*

Hameed Ullah, aka Tony Ullah, was indicted on money laundering and asset forfeiture charges for fraudulently operating a multiple employee welfare arrangement (MEWA). A superseding indictment was also returned charging Ullah with 15 counts of mail and wire fraud and money laundering.

Ullah converted health plan assets to his own use and misrepresented the plan's ability to pay claims from October 1992 to November 1993, leaving thousands of small employers and individuals with no health insurance coverage and with \$2 million in unpaid medical claims.

Ullah and several cohorts, doing business through 15 entities, operated a scheme to defraud employers and their employees through health coverage programs that falsely purported to pay medical claims through MEWAs.

As part of the scheme, Ullah opened and maintained approximately 41 bank accounts in three states. He received money from at least 2,500 employers, representing approximately 4,000 workers, who were continually advised by mail and in phone conversations that benefits would be paid.

Thirteen state departments of Insurance and PWBA received complaints from approximately 130 participants. Ullah, his entities and employees have been the subject of at least 11 cease and desist orders filed by state insurance departments. Subsequent to the search, PWBA investigators executed seizure

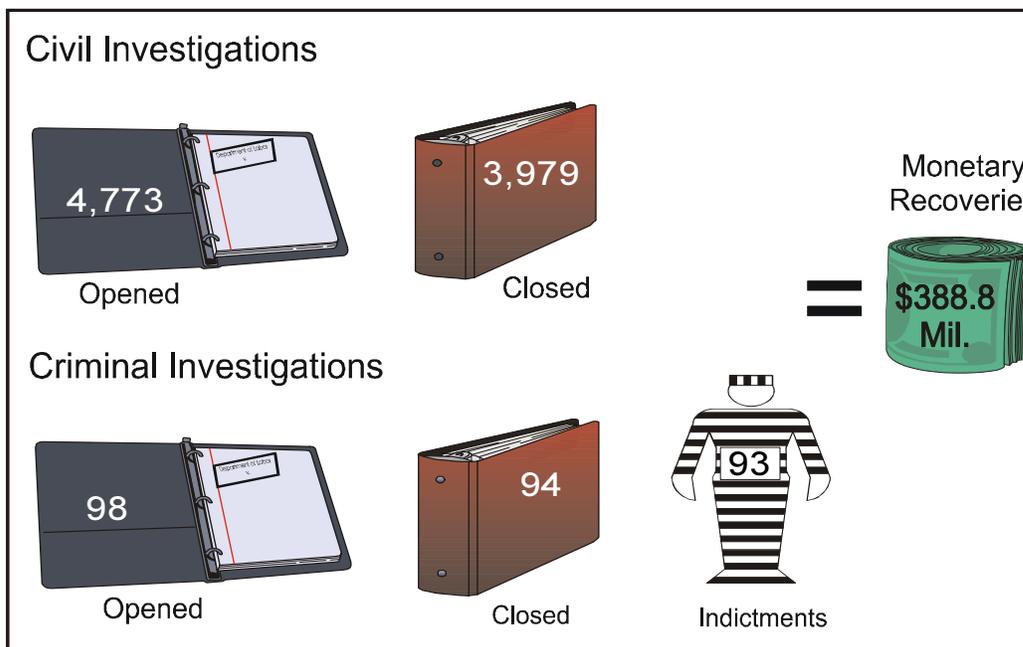
warrants at California banks and almost \$500,000 was seized from Ullah accounts. The charges resulted from an investigation conducted by PWBA and the FBI.

***U.S. v. Hay, Bartholomew***  
 11-2-95  
*Orange, Calif.*

Henry Hay was sentenced to 5 years imprisonment, followed by 3 years of supervised probation and ordered to make restitution of \$50,000 after being found guilty of mail fraud in connection with marketing and administering several group health-insurance plans in the late 1980s. He has appealed the convictions.

Hay allegedly engaged in a scheme to defraud the small employers for whom he designed and administered employee health benefit plans. Hay maintained that the plans were fully insured, when they had only stop-loss type insurance; withheld payment of claims and diverted premiums for his personal use.

He also allegedly sold benefit packages to employers who sponsored health plans and told them the plans were fully insured, when the plans were only partially insured for large claims. He also collected \$17 million in premiums and paid kickbacks to two insurance company executives, one of whom was Joseph Bartholomew, who was also indicted. Charges against Bartholomew were dismissed after the jury failed to reach a verdict. This case resulted from an investigation conducted by PWBA and the U.S. Postal Inspection Service.



*Both civil and criminal cases and recoveries or indictments may continue from one calendar to the next (i.e., a case opened in 1995 may not be settled until 1996). The numbers in the chart above represent totals for the 1995 calendar year.*

## Participant Assistance/Public Education

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One of the primary ways PWBA satisfies its mission of protecting pension, health and other benefits in private-sector employee benefit plans is by helping plan participants and beneficiaries to understand their rights, and employers and plan sponsors their obligations under the federal pension law.

This function is executed through the agency's Office of Program Services' (OPS) Division of Technical Assistance and Inquiries in the national office, and the 15 PWBA field offices. When participants write, call or visit one of these offices, they receive individualized assistance that informs them of their rights under the law and assistance in obtaining benefits.

Public education is also a significant part of the responsibilities of PWBA. Through OPS's Division of Public Affairs, the agency provides plan participants and the general public with educational publications and materials on their rights and protections under ERISA that aid in increasing public awareness of basic pension and retirement planning issues.

The Division of Public Affairs also serves as a liaison between the agency and the news media. It issues press releases on civil and criminal cases pertaining to ERISA; answers and directs media inquiries; holds press events to publicize agency issues and initiatives; hosts and arranges briefings on the agency's mission and the U.S. pension law for foreign delegations; and arranges speaking engagements throughout the country for the assistant secretary and other departmental officials who deliver the agency's messages on pension and retirement savings issues.

Through the OPS's Division of Public Disclosure, the agency provides the press and the public with basic financial information on employee benefit

plans that private-sector companies file with the Labor Department.

### Technical Assistance Initiatives

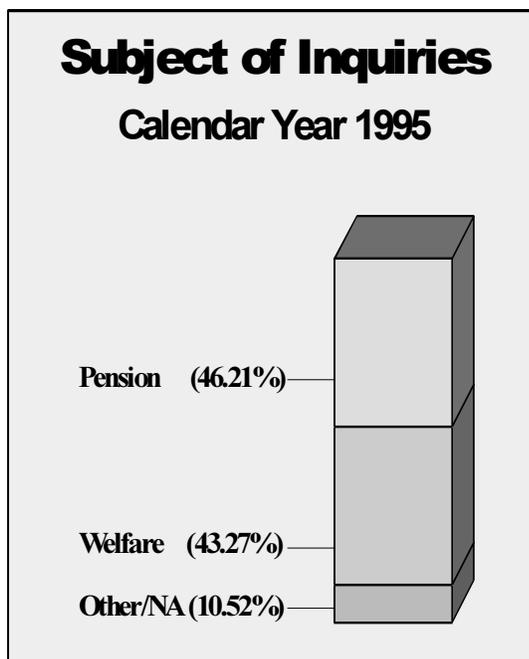
In 1995, PWBA made several improvements to its technical assistance program. These included new customer service standards that dramatically decreased response times to written and telephone participant inquiries, and an automated inquiry tracking system.

The Technical Assistance Inquiry Tracking System was designed to track all public inquiries received by the national and field offices. Basic information is now collected on inquiries by type (participant, employer, plan sponsor, etc.) and by other areas, such as subject of inquiry, disposition of inquiry, and amount of recovery, if appropriate. This database now provides documentation for the number of inquiries handled by the office and provides a wealth of information that can be used for policy development and enforcement initiatives. (See charts on page 26.)

In 1995, the agency conducted its first customer service satisfaction survey. The results show that:

- 99 percent of those who called the office received a return call by the end of the business day.
- 91 percent of the people who wrote the office received a response within 30 days.

- 82 percent of those surveyed rated the service average or better.



## The Retirement Savings Education Campaign

One of the most visible and successful projects undertaken by OPS was the Retirement Savings Education Campaign. Launched in July 1995 in conjunction with the Department of Treasury and 65 private- and public-sector partners, it spread an educational message focused on helping Americans understand the importance of planning and saving for their retirement. Through its campaign, the Department has been a

catalyst, heightening interest in the issue of retirement security and raising workers' awareness of retirement planning issues and resources.

The campaign partners have formed the American Savings Education Council (ASEC) to undertake initiatives to raise public awareness about what is needed to ensure long-term personal financial independence.

The Department and ASEC distributed educational materials to individuals, groups, and organizations. Two popular brochures were produced by the agency at the onset of the campaign:

- *Top Ten Ways to Beat the Clock and Prepare for Retirement* — the campaign's signature brochure highlighting 10 important steps people can take to prepare for their retirement.
- *What You Should Know About Your Pension Rights* — a booklet that gives an overview of workers' pension rights under ERISA.

## CY 1995 Inquiries Summary

**Total: 96,034**

Telephone 79,865

Written 16,169

### *Benefit Recoveries*

**\$12.5 Million**

Fiscal Year 1995

**NOTE:** The PWBA Technical Assistance Inquiries System for tracking inquiries was not implemented until April 1, 1995. Data is annualized -- based upon data available.

## Exemptions

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The Office of Exemption Determinations administers the agency's program for granting administrative exemptions from the prohibited transaction provisions of ERISA. The office has two divisions. One is responsible for class exemptions. The other administers the program for individual exemptions.

ERISA prohibits certain specified transactions between employee benefit plans and entities defined as "parties in interest." However, it gives the Labor Department authority to grant exemptions from these prohibited transaction restrictions if an applicant can demonstrate that a transaction is administratively feasible; serves the interests of the plan, its participants and beneficiaries; and protects the rights of the plan participants and beneficiaries. The office reviews applications for such exemptions and determines whether to grant relief. Individual exemptions relate to a particular plan or applicant. Class exemptions are applicable to anyone engaging in the described transactions, provided the enumerated conditions are satisfied.

In 1995, PWBA processed several exemptions involving complex financial transactions. Twenty-eight exemption applications were granted by the year's end and several others were being considered. These involved requests from employers to either loan money to plans or to buy guaranteed insurance contracts (GICs) from employee benefit plans under circumstances when the insurer is insolvent. GICs are a common investment for employee benefit plans under ERISA.

A number of employers who sponsored such plans requested permission to purchase the GICs from their plans or to loan money to their plans to prevent losses or delays in benefits.

The agency also developed an exemption policy permitting plans to sell collateralized mortgage obligations (CMOs) to fiduciaries of their plans.

Issues pertaining to cross-trading transactions — where the bank or investment advisor acts on behalf of both parties with respect to sales and purchases of the same securities — were also handled by the agency. It provided several exemptions that allowed the bank to purchase and sell its own stock on behalf of plans, and other funds, in order to conform to security indices.

PWBA worked with the Internal Revenue Service on an exemption case that resulted from the settlement of litigation involving a NationsBank frozen real estate collective investment fund. The settlement provided a number of different options to plan investors and a substantial role for the designated independent fiduciary.

General Motors was granted a significant exemption involving the contribution of \$6 billion of Class E Common Stock and \$4 billion in cash to a GM defined benefit plan. This exemption helped facilitate an agreement between the Pension Benefit Guaranty Corporation (PBGC) and GM to fund the plan.

PWBA also published a final class exemption in response to the Harris Trust Supreme Court decision that had a major impact on many insurance companies and the capital markets, the insurance company general accounts, and persons related to plan contract holders.

In other actions, PWBA granted three exemptions that permitted employee benefit plans to invest in asset-backed securities; two

connected to the demutualization of insurance companies; three involving the conversion of collective investment funds into mutual funds; three involving cross-trading of securities; and one that allowed for the sale of CMOs by employee benefit plans to take advantage of favorable investment opportunities that the plans could not have entered into without an exemption.

As an aid to plans wanting to apply for exemptions, PWBA also issued a booklet, *Exemptions Procedures Under Federal Pension Law*, describing the Department's requirement for issuing exemptions.

In 1995, PWBA received 258 exemptions, granted 165, denied or withdrew 112 and had pending by year's end 176.

The following is a list of the other prohibited transaction exemptions granted in 1995 by the agency:

### ***Exemptions for GICs***

		95-13 <i>Alucobond Technology, Inc.</i>	February 10 Loan to Plan
		95-15 <i>American Express Company</i>	February 28 Loan to Plan
		95-17 <i>Jerome Food, Inc.</i>	February 28 Sale by Plan
		95-18 <i>Modern Globe, Inc.</i>	February 28 Sale by Plan
		95-19 <i>Bassett-Walker, Inc.</i>	February 28 Sale by Plan
		95-27 <i>PACCAR, Inc.</i>	April 6 Loan to Plan
		95-29 <i>Virginia Fiber Corp.</i>	April 6 Sale by Plan
		95-30 <i>Central Fidelity National Bank</i>	April 6 Sale by Plan
95-2	January 18 Loan to Plan	95-35 <i>Shippers Paper Products, Inc.</i>	April 27 Sale by Plan
<i>Wilson Sporting Goods Co.</i>		95-44 <i>Neiman Marcus Group, Inc.</i>	June 7 Loan to Plan
95-5	January 30 Sale by Plan	95-46 <i>Simplex Time Recorder Co.</i>	June 15 Loan to Plan
<i>John R. Lyman Company</i>		95-53 <i>Toyota Motor Sales</i>	June 26 Sale by Plan
95-7	January 30 Sale by Plan		
<i>Lucky Electric Supply Co.</i>			
95-8	January 30 Loan to Plan		
<i>Stratus Computer, Inc.</i>			

95-55 June 26  
*Columbia Gas System* Loan to Plan

95-63 July 21  
*Eaton Corporation* Loan to Plan

95-65 July 31  
*The Brown Group, Inc.* Loan to Plan

95-69 August 9  
*84 Lumber Company* Loan to Plan

95-70 August 9  
*Universal Underwriters Group* Loan to Plan

95-78 September 6  
*KeyCorp.* Loan to Plan

95-93 October 6  
*Acushnet Company* Sale by Plan

95-99 October 17  
*Times Mirror Company* Loan to Plan

95-109 December 8  
*Rea Magnet Wire Company, Inc.* Sale by Plan

95-110 December 8  
*NEBCO, Inc.* Loan to Plan

95-111 December 8  
*Constructors, Inc.* Loan to Plan

95-112 December 8  
*Universal Surety Company* Loan to Plan

***Exemptions for asset-backed securities***

95-26 April 6  
*Dillon, Read & Co.*

95-59 July 12  
*Rothschild, Inc.*

95-89 September 21  
*BancOne Capital Corporation*

***Exemptions in connection with the demutualization of insurance companies***

95-58 July 12  
*Guarantee Mutual Life*

95-106 November 28  
*State Mutual Life Assurance Company*

***Exemptions for the conversion of collective investment funds into mutual funds***

95-33 April 27  
*Bank South, N.A.*

95-48 June 26  
*Mellon Bank, N.A.*

95-49 June 26  
*Norwest Bank, N.A.*

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***Exemptions for the cross-trading of securities***

95-56 July 12  
*Mellon Bank, N.A.*

95-66 July 31  
*BlackRock Financial Management*

95-83 September 13  
*Mercury Asset Management International Ltd.*

***Exemptions for the sale of CMOs***

95-45 June 15  
*Bank of Ashland, Inc.*

95-74 August 29  
*First and Farmers Bank of Somerset, Inc.*

***Other Significant Exemptions***

95-9 February 10  
*Peoples Security Life Insurance Company and Commonwealth Life Insurance Company.*  
Permits transactions in connection with synthetic GICs issued by Peoples Security and Commonwealth.

95-25 March 15  
*General Motors Corporation.* The transaction involves the contribution by GM of approximately \$6 billion of Class E common stock and \$4 billion in cash to a GM plan. The Class E stock is common stock of EDS Corp. that was acquired by GM in 1984.

The transaction reduced the unfunded liability of the plan by approximately 40 percent.

95-31 April 12  
*Financial Institutions Retirement Fund.*  
Permits the fund, which is a tax-qualified multiple-employer pension plan, to establish a wholly-owned, for-profit subsidiary corporation to provide services to employers that are parties-in-interest with respect to the fund.

95-39 June 1  
*NationsBank, N.A.* Permits NationsBank, which is maintaining a troubled real estate collective investment fund, to purchase units in the fund from plans invested therein. In addition, relief is provided for the bank's management of property jointly owned by plans that retain their interests in the fund and the new trust formed by the bank to purchase shares in the fund from the plans.

95-40 June 7  
*General Motors Corporation.* The transaction involves the stock index "exchange of futures for physicals" (EFP) transaction between certain General Motors Plans that occurred on Nov. 30, 1993, in the amount of approximately \$730 million.

95-47 June 26  
*Westinghouse Electric Corporation.* Permits the contribution of certain securities by Westinghouse to the Westinghouse Pension Plan. The securities, which represent debt and equity investments in private companies or restricted stock in public companies unrelated to Westinghouse, had a fair market value of approximately \$187 million.

95-50 June 26  
*Paloma Securities L.P. and Boston Global Advisors, Inc.* Permits plans to lend securities to Paloma.

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95-52                                  June 26  
*AT&T Corporation*. Permits the payment of performance fees by AT&T plans for real estate management services.

95-104                                 September 13  
*Prudential Insurance Company*. Permits Prudential to pay an enhanced return to plans invested in certain separate accounts.

***Significant Actions Relating to Class Exemptions***

July 12  
The Department granted PTE 95-60 that permits certain transactions engaged in by insurance company general accounts in which a plan has an interest. Additional relief would permit plans to engage in transactions with persons who provide services to insurance company general accounts.

March 26  
The Department published a notice of proposed exemption for plan asset transactions determined by in-house asset managers.

November 27  
The Department published a notice of proposed exemption to permit certain authorized transactions between plans and parties-in-interest where such transactions are subject to terms, conditions and representations that are substantially similar to exemptions previously granted by the Department.

## Regulatory Activities

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The Office of Regulations and Interpretations is responsible for planning, directing and carrying out PWBA's program for the development and delivery of policy and technical guidance concerning the application of most provisions of Title I of ERISA. It is also responsible for certain provisions of the Internal Revenue Code, the Federal Employees' Retirement System Act of 1986, and other laws affecting employee benefit plans. The office develops regulations and interpretive bulletins, and issues advisory opinions, information letters and rulings. It also develops employee benefit plan reporting forms and provides training, technical assistance and other guidance to facilitate compliance with and enforcement of the fiduciary, coverage, reporting and disclosure, and other statutory provisions administered by PWBA.

Following is a summary of the most significant opinions and regulatory guidance developed by PWBA during 1995.

### ***Booklet on Fidelity Bonding***

This booklet provided guidance concerning the application of the bonding provisions under Sec. 412 of ERISA.

### ***Interpretive Bulletin 95-1***

This bulletin announced the Labor Department's view of the legal standard under Title I of ERISA for a fiduciary's selection of an annuity provider when purchasing annuities for the purpose of distributing benefits under an employee benefit plan. Under this standard, plan fiduciaries choosing to purchase annuities have a duty to select the safest available

annuity provider, unless under the circumstances it would be in the interests of participants and beneficiaries to do otherwise.

### ***Proposed Rulemakings***

PWBA published a notice of proposed rulemaking that proposed standards for determining whether an employee benefit plan is established pursuant to one or more collective bargaining agreements for purposes of the definition of "multiple employer welfare arrangement" set forth in Sec. 3(40) of ERISA.

PWBA published a proposed regulation defining when participant monies paid to or withheld by an employer for contribution to an employee benefit plan constitute "plan assets" for purposes of Title I of ERISA.

### ***Significant Advisory Opinions***

#### ***AO95-04A 401(b)***

Clarifies how the venture capital operating company provisions of the plan assets regulation apply to small business investment companies.

#### ***AO95-18A 609(c)***

Clarifies the obligations of group health plans under ERISA to provide coverage for children who are placed for adoption with participants and beneficiaries.

#### ***AO95-19A 408(b)(1)***

Clarifies how to apply the rule that plan loans be "made available to all participants and beneficiaries on a reasonably equivalent basis" to a multiemployer plan involving collective bargaining agreements that are renegotiated at different times.

#### ***AO95-24A 403(c)(1)***

Clarifies how to apply ERISA's anti-inurement provisions to withdrawal liability payments

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returned to an employer that were incorrectly assessed due to computer programming errors.

***AO95-26A 408(b)(2)***

Clarifies how to apply the statutory prohibited transaction exemption for services to the settlement of a plan's claims against a service provider.

***AO95-11 3(32)***

Clarifies that the term "governmental plan" applies to a state retirement system covering over 30,000 public school employees, even if the system accepts charter school contributions allowing that school's 150 employees to participate in the system while its charter was in effect.

***AO95-15 3(32)***

Clarifies that the term "governmental plan" applies to a collectively bargained, jointly administered welfare plan primarily for almost 11,000 school district employees, even if fewer than 250 employees of the plan or of the union that is involved in plan administration are also participants.

## Policy and Legislative Analysis

The Office of Policy and Legislative Analysis provides leadership and coordination of employee benefit plan policy analysis, long-term policy development and legislative analysis. The office prepares technical analyses of legislative and policy proposals for PWBA policymaking officials. The office also prepares congressional and executive departmental briefings; proposed testimony and regulatory analyses; monitors congressional hearings and other legislative activity; prepares speeches and talking points; and handles inquiries and requests for technical assistance related to ERISA.

PWBA played a primary role in developing the Administration's pension simplification proposal announced in June 1995 by the President during the White House Conference on Small Business. This proposal resulted in the agency's legislative initiative to strengthen audits of employee benefit plans under ERISA — a measure that was introduced during the 103<sup>rd</sup> Congress — in both the House and the Senate. PWBA also worked on a revised audit bill, which was later introduced in December as S.1490 during the 104<sup>th</sup> Congress.

In addition to its work on pension simplification, PWBA conducted significant analyses and performed other activities on a variety of matters related to health care reform — including health fraud, securities litigation reform, the bankruptcy amendments and various legislative initiatives.

The agency was given substantial responsibilities under the reauthorization of the Paperwork Reduction Act (PRA). It had the task of examining 38 regulations and prohibited transaction exemptions to determine compliance with PRA requirements

and resubmitting to OMB for clearance and approval 23 PRA analyses.

During this time, PWBA also played a major role in preparing key testimony for Department officials.

### Key Testimony

#### *February*

**Secretary Reich** before the Securities and Exchange Commission on the Commission's concept release proposing a safe harbor for certain forward-looking statements

#### *May*

**Assistant Secretary Olena Berg** before the Joint Economic Committee on Economically Targeted Investments

#### *June*

**Assistant Secretary Olena Berg** before the House Committee on Economic and Educational Opportunities, Subcommittee on Employer-Employee Relations, on H.R. 1594 relating to limitations on Economically Targeted Investments

## Accounting and Auditing

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The Office of the Chief Accountant is responsible for enforcing the reporting and disclosure provisions of ERISA and administering an audit program to assure compliance with the fiduciary requirements of the Federal Employees' Retirement System Act of 1986 (FERSA).

PWBA implements a multifaceted program to improve compliance with ERISA's reporting and disclosure requirements. One component of this program is the implementation of a set of traditional enforcement initiatives involving civil penalties. These penalties are imposed against plan administrators for their failure to submit complete and accurate Form 5500 Series Annual Reports to the Department.

The agency has also established several proactive programs designed to help educate plan professionals and encourage voluntary compliance through reduced fines.

### ***Delinquent Filer Voluntary Compliance/Educational Outreach Programs***

The agency's reporting compliance program includes deficient filers, late-filers and non-filers. Almost \$10 million in civil penalties were assessed against plan administrators under the agency's reporting compliance program for filing unsatisfactory Form 5500 Series Annual Reports. Approximately \$22 million was assessed for late- and non-filings.

The agency recognized that to improve compliance, plan professionals needed to be better educated regarding ERISA's reporting and disclosure requirements, and that voluntary compliance would improve if plan

sponsors received reduced fines as an incentive.

Consequently, it decided in 1995 to leverage its resources and add to its traditional reporting and disclosure enforcement program a proactive, voluntary compliance program. To accomplish this objective it initiated the Delinquent Filer Voluntary Compliance (DFVC).

The DFVC Program was initiated by PWBA as a successor to its 1992 Grace Period Program to encourage plan administrators to file previously unfiled Form 5500 Series Annual Reports and to resolve late-filer penalties. In addition, plan administrators of top hat plans and apprenticeship and training plans who missed their filing deadlines could submit statements and elect an alternative method of compliance in lieu of filing an annual report.

The DFVC attempted to simplify the filing process and to reduce the financial hardship for voluntary compliance for small businesses through the imposition of smaller fines. DFVC collected more than \$7 million in civil penalties and received more than 2,400 new filings.

### ***Educational Outreach***

Under the sponsorship of the International Foundation of Employee Benefit Plans (IFEBC), PWBA initiated the Educational Outreach Program. Through a series of workshops, the agency staff presented both the Form 5500 filing requirements and an overview of the Department's enforcement program. Through December 1995, PWBA conducted six workshops in Atlanta, Boston, Chicago, Dallas, Denver and San Francisco.

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### ***AICPA's Guide for Auditing Employee Benefit Plans***

PWBA continued its work with the American Institute of Certified Public Accountants (AICPA) to revise its guide for auditing employee benefit plans. The updated guide, published in May 1995, incorporated new audit and accounting requirements issued by the Financial Accounting Standards Board (FASB). The guide is expected to improve compliance with ERISA's audit, reporting and disclosure provisions.

PWBA referred 246 cases of potential deficient accounting and auditing work to the American Institute of Public Accountants' Professional Ethics Division. Seventy were either referred to the AICPA's trial board or the accountant reached a settlement agreement. One hundred three cases resulted in remedial corrective action letters.

No violations were found in nine cases, while 22 cases were closed for other reasons. Fifty-five have been referred to state boards of accountancy in instances where the AICPA lacked jurisdiction over the accountant or the accountant was not properly licensed.

### ***Performance of On-Site Workplace Reviews***

PWBA continued its quality control program for improving the audit work performed by independent qualified public accountants. PWBA performed 90 on-site reviews and analyses of audit work papers that supported the accountant's report. These audits selected for review were part of the agency's special project to assess the quality of plan audits.

The Division of Accounting Services completed the special project in 1995 to assess

the quality of plan audits with the revised AICPA's audit and accounting guide *Audits of Employee Benefit Plans*. From the results, the Department could not statistically conclude that the quality of employee benefit plan audit work had improved since its 1989 assessment. The report identified certain contributing factors.

### ***Thrift Savings Plan Audits***

PWBA conducted fiduciary compliance audits of the Thrift Savings Plan (TSP), as required by the Federal Employees' Retirement System Act. Audit procedures were designed to strengthen the security of the \$35 billion held in 2.2 million TSP accounts of federal workers and to enhance opportunities for greater net earnings by recommending improvements in the TSP system.

## Research

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The Office of Research and Economic Analysis plans and administers an employee benefits research and economic analysis program to support PWBA policy and program priorities. It is also responsible for maintaining comprehensive data and statistics on the private retirement income system and pension plan investments that are derived from the annual reports of the Form 5500. These are released semi-annually in the *Private Pension Plan Bulletin* to make timely information available to research and policy analysts. According to the Winter 1995 *Private Pension Plan Bulletin*, in 1991 defined contribution pension plans held 43 percent of the total assets of private pension plans in the United States. This was an increase from 29 percent in 1980. Private pension plan assets increased by 16 percent from \$1.7 trillion in 1990 to nearly \$2 trillion in 1991.

Pension plans have grown dramatically in importance in the U.S. capital markets. Their assets exceed those of the banking system and they represent the largest financial intermediaries at this time. The majority of U.S. private savings are in the form of pension plan savings. In 1995, the focus of the Office of Research and Economic Analysis was to improve the understanding of the private employer-sponsored pension system and the employment-based health benefits system.

PWBA sponsored a conference in April 1995 on the importance of pensions' role in capital markets. Relevant studies funded by PWBA

were presented and a volume of conference proceedings was published the following year.

Findings from a 1994 survey on retiree pension and health benefits were published in 1995 in *Retirement Benefits of American Workers: New Health Findings from the September 1994 Current Population Survey*. Two of the highlights from this publication revealed:

- Fewer retirees are receiving continued health coverage from their former employer, and retirees who are able to continue their employment-based coverage have experienced about a 10 percent increase in real dollars in their share of premium payments from 1988 to 1994.
- From 1989 to 1994, the percentage of pension recipients, age 40 and over, receiving both an annuity and lump sum benefit increased from 8 to 10 percent; the percentage receiving benefits only in the form of a lump sum increased from 40 to 51 percent; and the percentage receiving only annuity benefits decreased from 52 to 38 percent. The combined changes in the employment-based pension and health care system have shifted more of both the costs and responsibilities of retirement planning to workers.

## **Other Research Studies**

- Allocating Assets and Discounting Cash Flows: Pension Plan Finance
- Corporate Performance and Pension Plan Design
- Defined Benefits, Defined Contributions and the Income Distribution
- Educational Attainment and Trends in Pension Coverage
- The Health Services Industry and Health Care Reform Legislation
- Implementing Effective Total Quality Management (TQM) Programs and the Financial Performance of Firms: An Empirical Investigation
- Innovative Firms and Pensions Plans
- Levels and Trends in Economic Security Levels of U.S. Private Wage and Salary Workers According to Available Employment-Based Pension and Health Coverage: 1988 and 1993
- 101 Important References for ETI Policymakers: An Annotated Bibliography
- Optimal Diversification Strategies Given a Distant Planning Horizon
- Report to the U.S. Department of Labor & U.S. Securities and Exchange Commission on Participant Education in Participant-Directed Defined Contribution Plans
- A Study of Household Wealth, Debt and Net Worth: The Role of Ethnicity and of Participation in Employer-Sponsored Health and Pension Plans
- Trends in Individual and Household Pension Coverage

## ERISA Advisory Council

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The Advisory Council on Employee Welfare and Pension Benefit Plans consists of 15 members, appointed by the Secretary of Labor to serve 3-year terms. The members must be qualified to appraise the programs instituted under the federal pension law.

Three members must represent employee organizations — with at least one representing participants of a multiemployer plan. Three must be selected from employer organizations, with at least one representative of employers maintaining or contributing to multiemployer plans and three members must be selected from the general public, one of whom must receive benefits from a pension plan. The six other members must be selected from the insurance, accounting, actuarial counseling, investment management and investment counseling and corporate trust communities. The law also requires that five members rotate off the council each Nov. 14 and that no more than eight appointees represent any one political party.

### Council Initiatives

In 1995, the council focused on three significant issues: adequacy of defined contribution plans, ways to continue to educate the public to save for future retirement needs, and real estate as investments.

After several public forums, the three working groups formulated and presented the following final recommendations to the Secretary. *The views of the council listed below do not necessarily reflect those of the Department.*

### Working Group on Defined Contribution Adequacy

- Continue to aggressively push for the passage of pension simplification legislation.
- Work with the Treasury Department to advocate tax policies that promote savings and pension coverage and develop and advocate legislation that would relax limits on contributions to defined contribution plans.
- Streamline and stabilize regulations to promote the expansion of pension coverage.
- Conduct additional research on policies to minimize leakage from defined contribution plan, while not adversely affecting participants.

### Working Group on Real Estate Investment

- Support continued Securities and Exchange Commission registration of real estate investment advisors.
- Continue to encourage dialogue between the real estate community and the SEC's Investment Management Division.
- Explore the feasibility of developing and disseminating a publication that details the duties of fiduciaries as they relate to plan investments in real estate.

- Require adherence to standard real estate valuation methods as a key element in prudent management of ERISA real estate portfolios.
- Expect for retirement plans investing in real estate to have a written valuation policy, including guidelines on appraisals and determination of current values as required by ERISA.
- Acknowledge the real estate industry's work in developing information standards for real estate portfolios and consider review and endorsement of existing standards from prominent industry groups.
- Study the area of real estate valuation best practices.
- Attach a higher priority to review of the proposed application for an advisory opinion, or, alternatively, a prohibited transaction class exemption regarding real estate performance based on compensation.
- Expand its partnerships to reach a wider audience.
- Consider ways in which required disclosure of plan information can be made more educational or can direct individuals to other sources of information.
- Facilitate distribution of basic pension education materials through its campaign partners, small business assistance centers, community colleges, extension offices and the Internet.
- Assure that the campaign is personally spearheaded by the Secretary of Labor and includes participation by other Cabinet-level departments.
- Refrain from mandating specific types of education.
- Resist efforts that undermine national retirement savings objectives for the sake of short-term government revenue considerations.

### **Working Group on Pension Education**

- Aim specific messages on the Retirement Savings Education Campaign at certain demographic groups, including students, union employees, potential plan sponsors and younger workers.
- Issue guidance on investment education versus advice that will reduce uncertainty and inertia in this area.

## ERISA Advisory Council 1995 Members

### Accounting

*Randi L. Starr\**  
Deloitte & Touche

### Actuarial Counseling

*Zenaida Samaniego*  
Equitable Life Assurance Society of the  
United States

### Investment Counseling

*Thomas J. Healey*  
Goldman, Sachs & Co.

### Employee Organizations (Multiemployer Plans)

*Glenn W. Carlson*  
Arthur Andersen & Co.

### Employer Organizations (Multiemployer Plans)

*Joyce A. Mader*  
O'Donoghue & O'Donoghue

### Employee Organizations

*Marguerite M. (Peggy) Connerton\**  
AFL-CIO, CLC

*David G. Hirschland*  
United Auto Workers/Social Security  
Department

### Employer Organizations

*Carl S. Feen*  
Cigna Financial Advisors

*Peter H. Turza*  
Gibson, Dunn & Crutcher

### Investment Management

*Jim Hill*  
Treasurer, State of Oregon

### General Public

*Edward B. Montgomery*  
University of Maryland/Department  
of Economics

*Susan D. Diehl\**  
PenServe, Inc.

### General Public (Pensioners)

*Victoria Quesada*  
Attorney-at-Law

### Insurance

*Richard H. Headlee\**  
Alexander Hamilton Life Insurance  
Company of America

### Corporate Trust

*Judith Mares*  
Mares Financial Consultant, Inc.

\*Terms for these members expired in November 1995.